IN THE UNITED STATES OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-16346-FF

VOYEUR DORM, L.C., a Florida Limited liability company, ENTERTAINMENT NETWORK, INC., a Florida corporation, AUTUMN DAWN MARENGER, 2 D&K, INC.,

Plaintiffs-Appellants,

DAN MARSHLACK,
SHARON GOLD MARSHLACK,

Plaintiffs,

versus

CITY OF TAMPA, FL, a Florida municipal corporation,

Defendant-Appellee.

On Appeal from the
United States District Court for the
Middle District of Florida

(Filed Nov. 15, 2001)

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

(Opinion _____, 11th Cir., 19___, ___ F.2d ___).

Before: TJOFLAT, DUBINA and DUHE*, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Joel F. Dubina
UNITED STATES CIRCUIT JUDGE

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* Honorable John M. Duhe, Jr., U.S. Circuit Judge for the Fifth Circuit, sitting by designation.

APPENDIX D

AGREEMENT

THIS AGREEMENT is made in Tampa, Florida, on the 1st day of June, 1999, between Voyeur Dorm, L.C. a Florida limited liability company having its principal office at 6965 1st avenue North, St. Petersburg, Florida 33710 ("VDORM"), and Autumn Marenger. ("EMPLOYEE").

WITNESSETH:

WHEREAS, VDORM is engaged in the business of, among other business lines, providing Internet based entertainment services to customers throughout the world and has invested substantially in the development of computer techniques, marketing programs, software, services, systems, and other confidential property, information, and trade secrets, and inventions, discoveries, improvements or developments (herein designated "inventions"); and

WHEREAS, VDORM enters into contracts with its customers and must ensure that customer programs, data, and information remain confidential; and

WHEREAS, the EMPLOYEE in the course of his or her employment has access to inventions, and to such techniques, programs, software, services, systems, and other confidential property, information, and trade secrets of VDORM and the customers of VDORM; and,

WHEREAS, the EMPLOYEE acknowledges that it is essential to the conduct of VDORM's business and to the protection of the investment of its members that such

information be kept confidential and treated as secret and that its customer relationships must be protected; and,

WHEREAS, VDORM desires to protect and preserve its trade secrets and confidential business information and to protect its customer relationships; and

WHEREAS, the EMPLOYEE desires to enter the employment of, or to maintain his or her employment with, VDORM;

WHEREAS, EMPLOYEE desires and intends to allow VDORM or its assigns, to commercially photograph and broadcast the images and likeness of EMPLOYEE, live, over the internet 24 hours a day 7 days a week, as hereinafter provided; and,

WHEREAS, in consideration of EMPLOYEE allowing VDORM or its assigns, to commercially photograph and broadcast the images and likeness of EMPLOYEE, live over the internet 24 hours a day 7 days a week, as hereinafter provided, VDORM agrees to allow EMPLOYEE to occupy and use a furnished bedroom and all common areas at the furnished dwelling located at 2312 Farwell Drive, Tampa, Florida, 33603, and other benefits as set out below, on the following terms and conditions;

NOW THEREFORE, IT IS AGREED:

1. TERM: This Agreement commences on June 1, 1999 and may be terminated at will by either party.

   a. Notwithstanding any provisions to the contrary contained in this Agreement, VDORM may deliver a written notice of cancellation of this Agreement to EMPLOYEE, at will.

b. Upon delivery of the termination notice EMPLOYEE'S employment by VDORM shall immediately terminate and the EMPLOYEE shall immediately remove her personal property, leave and surrender the premises to VDORM.

2. MUTUAL CONSIDERATION: In return for the benefits set out herein to be provided by VDORM to EMPLOYEE during the term of this Agreement, EMPLOYEE, during the term of this Agreement, shall allow VDORM to commercially photograph and broadcast the likeness of EMPLOYEE, live, over the internet 24 hours a day 7 days a week, as hereinafter provided.

3. OCCUPANCY: The premises shall be occupied only by EMPLOYEE and other EMPLOYEEs approved by VDORM and no others as a private residence and for no other use or purpose.

4. ASSIGNMENT: Without the prior written consent of VDORM, EMPLOYEE shall not assign this Agreement.

5. UTILITIES: VDORM agrees to pay for all utilities, including electricity and local telephone, used by EMPLOYEE at the Farwell location, during the term of this Agreement. VDORM shall pay water and sewer charges and the cost of garbage and trash collection.

6. REPAIRS: EMPLOYEE shall take good care of the premises and the appliances and fixtures in them. VDORM shall, at VDORM's expense, perform all ordinary repairs and maintenance to the premises. However, VDORM may repair, at the expense of EMPLOYEE, all damage or injury to the premises, or to the building, done by EMPLOYEE or EMPLOYEE's agents, visitors, or licensees, caused

by installation or removal of furniture or other property, or resulting from the overflow of water, or any other cause, due to the carelessness, negligence, or improper conduct of EMPLOYEE or EMPLOYEE's, agents, visitors, or licensees. There shall be no liability on the part of VDORM for the making of any repairs, alterations, additions, or improvements in, or to any portion of, the building or premises, and no liability on VDORM for failure to make any repairs, alterations, additions, or improvements in, or to any portion of, the building or premises.

7. ANIMALS: EMPLOYEE shall keep no domestic or other animals in, about, or on the premises without the prior written consent of VDORM.

8. GUESTS: EMPLOYEE shall NOT permit or allow any guests on the premises without the prior written consent of VDORM.

9. ENTRY: EMPLOYEE acknowledges that the premises are, in addition to being the residence of EMPLOYEE, a stage and filming location for commercial internet broadcasting of the day to day activities of EMPLOYEE and other fellow EMPLOYEES, 24 hours per day, 7 days a week. VDORM's agents shall have the right to enter the premises at all hours for any purpose whatsoever related to the business of VDORM and whenever necessary to make repairs and alterations. EMPLOYEE shall make no alterations, changes, or improvements to the house and outside premises.

10. EMPLOYEE'S OBLIGATIONS.

    A. EMPLOYEE shall not touch, alter, move or in any way interfere with the location or operation of the "LIVE HIDDEN VOYEUR CAMERAS" that are located in and on the premises, or that

may from time to time be located on the premises.

B. EMPLOYEE agrees to defend, indemnify, save and hold VDORM, its assigns, employees, officers and directors harmless from and against all claims, damages, losses and expenses including attorney's fees arising out of EMPLOYEE's activities while on the premises, which are for bodily injury, illness or death, criminal charges or for property damage, including loss of use, and caused in whole or in part by the EMPLOYEE's act of omission.

C. EMPLOYEE shall be responsible for all conditions created or caused by the negligent or wrongful act or omission of the EMPLOYEE, or other person on the premises with EMPLOYEE's consent.

D. At all times during the term of this Agreement, the EMPLOYEE shall:

i. Keep the premises clean and sanitary.

ii. Remove all garbage in a clean and sanitary manner.

iii. Keep all plumbing fixtures clean and sanitary.

iv. Not destroy, deface, damage, impair, or remove any part of the premises or property in them belonging to VDORM, or permit any person to do so.

v. Conduct herself, and require other persons on the premises with EMPLOYEE'S consent to conduct themselves, in a manner that does not unreasonably disturb other employees, the neighbors or constitute a breach of the peace.

vi. Use and operate in a reasonable manner all electrical plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances.

vii. Comply with all rules and regulations promulgated by VDORM and VDORM's designated Agents, (housemothers) as they may be appointed from time to time.

11. EMPLOYEE ACKNOWLEDGEMENT. EMPLOYEE acknowledges and consents that at all times that she is present on the premises, she will be monitored and photographed by "LIVE HIDDEN VOYEUR CAMERAS" and that same will be commercially broadcast, live and unedited over the internet, 24 hours a day, 7 days a week. EMPLOYEE acknowledges that she has received, understood and for value received, signed a "RELEASE" of even date herewith.

12. WASTE AND NUISANCE: EMPLOYEE agrees that EMPLOYEE will not commit waste on the premises, will not maintain or permit to be maintained a nuisance on the premises, nor will use the premises, or permit their use, in an unlawful manner.

13. REQUIREMENTS OF LAW: EMPLOYEE shall comply with all laws, orders, and regulations of federal, state, county, and municipal authorities that impose any duty on VDORM or EMPLOYEE with respect to the premises or the use or occupation of them. EMPLOYEE shall not do, or permit to be done, any act or thing on the premises that shall or might subject VDORM to any liability or responsibility for injury to any person or persons or to any property by reason of any operation occurring on the premises. EMPLOYEE shall reimburse VDORM for all expenses incurred as a result of EMPLOYEE, or EMPLOYEE'S family, EMPLOYEE'S, agents,

licensees, or visitors, who violate the covenants and terms of this Agreement.

14. WAIVERS: A waiver by VDORM of a breach of any covenant or duty of EMPLOYEE under this Agreement is not a waiver of a breach of any other covenant or duty of EMPLOYEE, or of any subsequent breach of the same covenant or duty.

15. END OF TERM: On the termination of this Agreement, EMPLOYEE shall immediately quit and surrender the premises to VDORM in as good condition as they were at the commencement of this Agreement, ordinary wear excepted, and EMPLOYEE shall immediately remove all of her personal property.

16. FEES AND EXPENSES: If EMPLOYEE defaults in the performance of any term or covenant required under this Agreement, VDORM may immediately or at any time after the default and without notice to the EMPLOYEE, perform the obligation. VDORM's expenses or obligation for the payment of money, including attorneys' fees, in instituting, prosecuting, or defending any action or proceeding including interest and costs, are due and payable by EMPLOYEE to VDORM within three days following the presentation of a bill or statement to EMPLOYEE. If the Agreement term has expired at the time the VDORM makes these expenditures or incurs these obligations, the amounts are recoverable by the VDORM from the EMPLOYEE as damages.

17. INTERRUPTION OF SERVICE: Interruption or failure of any service in the building, if due to causes beyond VDORM'S control, shall not entitle EMPLOYEE to any claim against VDORM, and shall not constitute breach unless VDORM shall fail to take measures as may be reasonable in the circumstances to restore the service without undue delay.

18. ABANDONMENT: If at any time during the term of this Agreement, EMPLOYEE abandons the premises, VDORM may reenter the premises, by any means, without being liable for any prosecution, and without becoming liable to EMPLOYEE for damages or for any payment of any kind whatever. If the EMPLOYEE surrenders or abandons the premises, VDORM shall not be liable or responsible for storing or disposing of any of the EMPLOYEE's personal property remaining on the premises. In the absence of actual knowledge of abandonment, VDORM may presume that the EMPLOYEE has abandoned the premises if she is absent from the premises for a period of three days unless VDORM has agreed to the absence in writing prior to an intended absence.

19. USE OF GOODS AND CHATTELS: EMPLOYEE covenants that EMPLOYEE will carefully and economically use the appliances contained in the house and further covenants that EMPLOYEE will not transfer the use or possession of the appliances to any other person, without the written consent of VDORM. EMPLOYEE will repair all injury and pay all damages that may happen or accrue to the appliances during the term of this Agreement arising out of EMPLOYEE's negligence.

20. VEHICLES: EMPLOYEE shall not keep or permit to be kept on the premises any junk vehicle, vehicle on which current registration plates are not displayed trailer, truck, camper, camp truck, house trailer, boat, motorcycle, van or the like, nor shall there be any repair or extraordinary maintenance of automobiles or other vehicles on the property.

21. COMPENSATION: EMPLOYEE acknowledges and consents that VDORM shall commercially broadcast the likeness and images of EMPLOYEE, live over the internet 24 hours a day, seven days a week, and

covenants and agrees with VDORM that EMPLOYEE shall receive compensation as set forth in Exhibit B hereto. EMPLOYEE acknowledges and expressly agrees and consents to the schedule of deductions and offsets for rule infractions set forth in Exhibit B.

22. EXTENT OF SERVICE. As part of EMPLOYEE'S duties, EMPLOYEE agrees to devote 8 hours per day, 6 days per week, to the following on camera activities:

E. 3-4 hours of "chat" per day.

F. 4-5 hours per day of "scheduled activities". Included within "scheduled activities" by way of example and not limitation are; swimming, tanning, working out, aerobics, theme parties and special events, studying, arts and crafts, personal grooming and ablutions, selecting attire and dressing, and such other activities that VDORM may from time to time specify.

G. EMPLOYEES shall study class assignments not less than 1.5 hours per day as part of their educational obligation.

H. Attend and complete not less that 6 credit hours of college level courses per term.

23. BONUS: Provided that EMPLOYEE fully and faithfully complies with all terms and conditions of this Agreement for the term(s) set out below, VDORM shall pay to EMPLOYEE the monies set out below adjacent to the respective term(s):

a. Upon completion of four months the sum of:	$ 400.00
b. Upon completion of eight months an additional sum of:	$ 800.00
c. Upon completion of one year an additional sum of:	$1,200.00

24. RESTRICTIVE COVENANT. During her employment with VDORM and for a period of two (2) years immediately following termination of such employment, whether by termination of this Employment Agreement by VDORM with or without cause, wrongful discharge, or for any other reason whatsoever, the EMPLOYEE shall not, directly or indirectly, either as an individual on her own account or as a partner, joint venturer, employee, agent, salesman, contractor, officer, director, or stockholder or otherwise, enter into, engage in, or accept employment from any business in competition with the business of VDORM, as such business now exists or as it may exist at the time of termination, anywhere in the United States ("the Restrictive Covenant"); this Restrictive Covenant specifically includes as prohibited businesses, but it is not limited to, providing Internet entertainment based on a residential setting, and the like.

This Restrictive Covenant on the part of the EMPLOYEE is given and made by the EMPLOYEE to induce VDORM to employ the EMPLOYEE and to enter into this Employment Agreement with the EMPLOYEE, and the EMPLOYEE hereby acknowledges the sufficiency of the consideration for this Restrictive Covenant.

This Restrictive Covenant shall be construed as an agreement independent of any other provision in this Agreement, and the existence of any claim or cause of action of the EMPLOYEE against VDORM, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement by VDORM of this Restrictive Covenant. VDORM has fully performed all obligations entitling it to this Restrictive Covenant, and this Restrictive Covenant therefore is not executory or otherwise subject to rejection under the Bankruptcy Code.

This Restrictive Covenant is a reasonable and necessary restraint of trade and does not violate the Sherman Antitrust Act, the Florida Antitrust Act, or the common law; it is supported by valid business interests, including the protection of VDORM trade secrets and confidential business information and the protection of VDORM'S relationships with its customers and prospective customers, and the two (2)-year restriction is essential to the full protection of those valid business interests.

If any portion of this Restrictive Covenant is held by a court of competent jurisdiction to be unreasonable, arbitrary, or against public policy for any reason, this Restrictive Covenant shall be considered divisible as to line of business, time, and geographic area; if a court of competent jurisdiction should determine the specified lines of business, the specified period, or the specified geographic area to be unreasonable, arbitrary, or against public policy for any reason, a narrower line of business, a lesser period, or a smaller geographic area that is determined to be reasonable, non-arbitrary, and not against public policy for any reason, may be enforced by VDORM against the EMPLOYEE.

25. RESTRICTIVE COVENANT-REMEDIES. VDORM and the EMPLOYEE agree that, in the event of a breach by the EMPLOYEE of the Restrictive Covenant set forth in Paragraph 24, above, such a breach would irreparably injure VDORM and would leave VDORM with no adequate remedy at law, and VDORM and the EMPLOYEE further agree that, if legal proceedings (including arbitration proceedings) should have to be brought by VDORM against the EMPLOYEE to enforce the Restrictive Covenant, VDORM shall be entitled to all available civil remedies, including without limitation:

A. Preliminary and permanent injunctive relief restraining the EMPLOYEE from violating, directly or indirectly, either as an individual on his or her own account or as a partner, joint venturer, employee, agent, salesman, contractor, officer, director, or stockholder or otherwise, the restrictions of this Agreement;

B. Attorneys' fees in the trial and appellate courts and in all arbitration proceedings; and,

C. Costs and expenses of investigation, litigation, and arbitration, including expert witness fees, deposition costs (appearance fees and transcript charges), injunction bond premiums, travel and lodging expenses, arbitration fees and charges, and all other reasonable costs and expenses.

Nothing in this Employment Agreement shall be construed as prohibiting VDORM from pursuing any other legal or equitable remedies available to it for breach or threatened breach of the Restrictive Covenant.

If the EMPLOYEE violates the Restrictive Covenant, directly or indirectly, either as an individual on her own account or as a partner, joint venturer, employee, agent, salesman, contractor, officer, director, or stockholder or otherwise, any and all sales of services by the EMPLOYEE (or the partnership, joint venture, corporation, or other entity with which he or she is associated) in competition with the services of VDORM shall be conclusively presumed to have been made by VDORM but for the violation of the Restrictive Covenant.

Should legal proceedings (including arbitration proceedings) have to be brought by VDORM against the EMPLOYEE to enforce the Restrictive Covenant, the

period of restriction shall be deemed to begin running on the date of entry of an order granting VDORM preliminary injunctive relief and shall continue uninterrupted for the next succeeding two (2) years; the EMPLOYEE acknowledges that such purposes and effect would be frustrated by measuring the period of restriction from the date of termination of employment where the EMPLOYEE failed to honor the Restrictive Covenant until directed to do so by court order. VDORM and the EMPLOYEE agree that, if VDORM is granted preliminary injunctive relief under this Agreement, an injunction bond of no more than $5,000 shall be sufficient to indemnify the EMPLOYEE for any costs or damages that she might incur if the Court ultimately determines that the EMPLOYEE was wrongfully enjoined.

26. NON-DISCLOSURE – TRADE SECRETS: The EMPLOYEE during the term of this Agreement will have access to and become familiar with various trade secrets, consisting of formulas, patterns, devices, techniques, equipment, secret inventions, processes, and compilations of information, records, and specifications, that are owned by VDORM and that are regularly used in the operation of VDORM's business. The EMPLOYEE shall not disclose any of these trade secrets, directly or indirectly, or use them in any way, either during the term of this Agreement or at any later time. All files, records, documents, drawings, specifications, equipment, and similar items relating to the business of VDORM, whether prepared by the EMPLOYEE or otherwise coming into the EMPLOYEE's possession, shall remain the exclusive property of the VDORM and shall not be removed from the premises under any circumstances whatsoever without the prior written consent of VDORM.

27. **PRIVACY: PURSUANT TO FLORIDA STATUTES 810.14, *et seq*, EMPLOYEE HEREBY ACKNOWLEDGES THAT SHE HAS NO REASONABLE EXPECTATION OF PRIVACY WHILE ON THE PREMISES AND EXPLICITLY AGREES AND CONSENTS TO HAVING HER IMAGES AND LIKENESS COMMERCIALLY BROADCAST BY VDORM, LIVE OVER THE INTERNET 24 HOURS A DAY, 7 DAYS A WEEK.**

28. **NON-TENANCY, EMPLOYEE EXPRESSLY AGREES AND ACKNOWLEDGES THAT: (i) SHE IS NOT A TENANT OF VDORM; AND (ii) SHE WAIVES ANY RIGHTS THAT SHE MAY HAVE AS A RESIDENTIAL TENANT UNDER FLORIDA STATUTE § 83, *ET SEQ*.**

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written above.

_____	/s/ Heather Martin
Voyeur Dorm, L.C.	Witness
By: /s/ Bruce Hammil	
/s/ Autumn Marenger	/s/ B – H –
EMPLOYEE	Witness

EXHIBIT B

EMPLOYEE: Autumn Marenger

WEEKLY SALARY OF: $425,

BEGINNING 6-1-99.

AUTHORIZED DEDUCTIONS AND SET OFFS

I, the undersigned Employee do hereby expressly authorize Voyeur Dorm, L.C., to take the following actions and to deduct from my weekly salary the following sums:

1.	Unauthorized absence from house.	$100.00 each occurrence.
2.	Unauthorized absence from chat.	$ 50.00 each occurrence
3.	Failure to participate in scheduled activities.	$ 50.00 each occurrence
4.	Unauthorized contact with a customer or any person met or contacted via Voyeur Dorm on-line chat.	Immediate termination and forfeiture of any accrued bonus.
5.	Covering or moving of cameras.	Immediate termination and forfeiture of any accrued bonus.

/s/ Autumn Marenger
Employee

6-1-99
Date